

AMENDED IN ASSEMBLY AUGUST 30, 2013

AMENDED IN ASSEMBLY JUNE 27, 2013

SENATE BILL

No. 269

Introduced by Senator Hill

February 14, 2013

An act to amend and renumber Section 10167.9 of, to amend and repeal Sections 10167.5, 10167.13, and 10167.16 of, to amend, repeal, and add Sections 10167, 10167.2, and 10167.3 of, to repeal Sections 10167.4, 10167.7, 10167.8, and 10167.17 of, and to repeal and add Section 10167.6 of, Sections 149, 10080.9, 10167.3, 10167.9, 10470, 10471, and 10475 of, and to add Section 10167.95 to, the Business and Professions Code, relating to real estate, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 269, as amended, Hill. Prepaid rental listing service.

Existing law authorizes specified state agencies to issue a citation including an order of correction, as specified, if, upon investigation, the agency has probable cause to believe that a person is advertising services in a telephone directory without being properly licensed or registered to offer or perform those services.

This bill would authorize the Bureau of Real Estate to issue those citations.

The Real Estate Law provides for the licensure and regulation of prepaid rental listing services by the Real Estate Commissioner. Existing law prohibits a person from engaging in the business of a prepaid rental listing service unless licensed in that capacity or licensed as a real estate broker. A willful violation of these provisions is a crime.

~~This bill would prohibit the department from issuing a prepaid rental listing service license. The bill, beginning January 1, 2015, would prohibit a person from engaging in that business unless the person is licensed as a real estate broker or is licensed as a real estate salesperson and is acting under the supervision of a real estate broker. The~~

Existing law authorizes the commissioner, or his or her designated representative, to issue a citation to a person who does not possess a real estate license if the commissioner has cause to believe that the person is engaged or has engaged in activities for which a license is required.

This bill would additionally authorize a citation to be issued for a person who does not possess a prepaid rental listing service license or a real estate broker license if the commissioner has cause to believe that the person is engaged or has engaged in activities for which a license is required.

Existing law requires a \$100 fee for an application for a license as a prepaid rental listing service for the first location, and a \$25 fee for each additional location. Existing law imposes additional fees for obtaining or renewing a broker license or salesperson license when, on June 30 of any year, the balance remaining in the Consumer Recovery Account, a continuously appropriated account in the Real Estate Fund, is less than \$200,000, and for 4 years thereafter.

This bill would increase those application fees to \$125 and \$50, respectively. The bill would require \$25 of each application fee to be credited to the Consumer Recovery Account. The bill would also impose an additional fee of \$1 on every person obtaining or renewing a prepaid rental listing service license for 2 years after the balance in that account is less than \$200,000. By increasing the amount of moneys that may be deposited into the Consumer Recovery Account, this bill would make an appropriation.

Existing law requires a prepaid rental listing service licensee to offer the prospective tenant a written contract prior to the acceptance of a fee. The contract must include, among other things, the licensee's name.

This bill would also require the contract to include the licensee's license number.

The bill would also require a specified written notice about refunds to be provided to the prospective tenant prior to the acceptance of a fee. Because a willful violation of these provisions would be a crime, this bill would impose a state-mandated local program. The bill also would

make related changes, including deleting provisions that pertain to prepaid rental listing service licensee: changes.

Existing law authorizes an aggrieved person, who obtains a final judgment, including a criminal restitution order, or an arbitration award based on a defendant's acts for which a real estate license was required, to apply to the bureau for payment from the Consumer Recovery Act, as specified. Existing law requires the license of a broker or salesperson to be automatically suspended when the commissioner pays from the Consumer Recovery Account any amount in the settlement of a claim or toward the satisfaction of a judgment against that broker or salesperson.

This bill would additionally apply those provisions to the license of a prepaid rental listing service licensee.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~-yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. The Legislature finds and declares that requiring~~
2 ~~a real estate license to lawfully provide prepaid rental listing~~
3 ~~services serves the valid governmental purposes of public~~
4 ~~protection and victims' compensation. The safeguards contained~~
5 ~~in this legislation are intended to reduce the significant and~~
6 ~~unacceptably large amounts of prepaid rental listing service fraud~~
7 ~~perpetrated against unsuspecting, prospective tenants by persons~~
8 ~~who lack real estate licenses. The safeguards in this bill will also~~
9 ~~permit persons who may be harmed through prepaid rental listing~~
10 ~~service fraud to seek compensation from the Consumer Recovery~~
11 ~~Account, a remedy which is not available to persons who obtain~~
12 ~~prepaid rental listing services through a person that does not hold~~
13 ~~a real estate license.~~

14 ~~SEC. 2. Section 10167 of the Business and Professions Code~~
15 ~~is amended to read:~~

16 ~~10167. The definitions used in this section shall govern the~~
17 ~~construction and terms as used in this article:~~

1 ~~(a) “Prepaid rental listing service” means the business of~~
2 ~~supplying prospective tenants with listings of residential real~~
3 ~~properties for tenancy, by publication or otherwise, pursuant to an~~
4 ~~arrangement under which the prospective tenants are required to~~
5 ~~pay an advance or contemporaneous fee (1) specifically to obtain~~
6 ~~listings or (2) to purchase any other product or service in order to~~
7 ~~obtain listings, but which does not otherwise involve the~~
8 ~~negotiation of rentals by the person conducting the service.~~
9 ~~“Prepaid rental listing service” does not include the business of~~
10 ~~providing roommate referral information designed to assist persons~~
11 ~~in locating a roommate who meets various selection criteria related~~
12 ~~to the prospective roommate’s personal traits, characteristics, habits~~
13 ~~or preferences, and selection criteria related to the residential real~~
14 ~~property occupied by the prospective roommate.~~

15 ~~(b) “Licensee” means a person licensed to conduct a prepaid~~
16 ~~rental listing service or a person engaged in the business of a~~
17 ~~prepaid rental listing service under a real estate broker license.~~

18 ~~(c) “Location” means the place, other than the main or branch~~
19 ~~office of a real estate broker, where a prepaid rental listing service~~
20 ~~business is conducted.~~

21 ~~(d) “Designated agent” means the person who is in charge of~~
22 ~~the business of a prepaid rental listing service at a given location.~~

23 ~~(e) “Fee” means the charge required by a licensee (1) to obtain~~
24 ~~listings of residential real properties for tenancy or (2) to purchase~~
25 ~~any other product or service in order to obtain listings.~~

26 ~~(f) “Service charge” means the amount of the fee that a licensee~~
27 ~~may retain if a prospective tenant finds housing through a source~~
28 ~~other than the listings supplied by the licensee.~~

29 ~~(g) This section shall remain in effect only until January 1, 2015,~~
30 ~~and as of that date is repealed, unless a later enacted statute, that~~
31 ~~is enacted before January 1, 2015, deletes or extends that date.~~

32 ~~SEC. 3. Section 10167 is added to the Business and Professions~~
33 ~~Code, to read:~~

34 ~~10167. The definitions used in this section shall govern the~~
35 ~~construction and terms as used in this article:~~

36 ~~(a) “Prepaid rental listing service” means the business of~~
37 ~~supplying prospective tenants with listings of residential real~~
38 ~~properties for tenancy, by publication or otherwise, pursuant to an~~
39 ~~arrangement under which the prospective tenants are required to~~
40 ~~pay an advance or contemporaneous fee (1) specifically to obtain~~

1 listings or (2) to purchase any other product or service in order to
2 obtain listings, but which does not otherwise involve the
3 negotiation of rentals by the person conducting the service.
4 “Prepaid rental listing service” does not include the business of
5 providing roommate referral information designed to assist persons
6 in locating a roommate who meets various selection criteria related
7 to the prospective roommate’s personal traits, characteristics, habits
8 or preferences, and selection criteria related to the residential real
9 property occupied by the prospective roommate.

10 (b) “Licensee” means a person engaged in the business of a
11 prepaid rental listing service under a real estate license.

12 (c) “Location” means the place, other than the main or branch
13 office of a real estate broker, where a prepaid rental listing service
14 business is conducted.

15 (d) “Designated agent” means the person who is in charge of
16 the business of a prepaid rental listing service at a given location.

17 (e) “Fee” means the charge required by a licensee (1) to obtain
18 listings of residential real properties for tenancy or (2) to purchase
19 any other product or service in order to obtain listings.

20 (f) “Service charge” means the amount of the fee that a licensee
21 may retain if a prospective tenant finds housing through a source
22 other than the listings supplied by the licensee.

23 (g) This section shall become operative on January 1, 2015.

24 SEC. 4. Section 10167.2 of the Business and Professions Code
25 is amended to read:

26 10167.2. (a) It is unlawful for any person to engage in the
27 business of a prepaid rental listing service unless licensed in that
28 capacity or unless licensed as a real estate broker.

29 (b) (1) The requirements of this article apply only to the
30 provision of listings of residential real properties for tenancy by
31 prepaid rental listing services. Except if expressly provided
32 otherwise in this article, the requirements of this article do not
33 apply to any other goods or services sold by a prepaid rental listing
34 service as long as the purchase of those goods or services is not
35 required to obtain those listings, and as long as the purchase of
36 those goods or services is not included in the same contract as the
37 contract to provide those listings, and as long as the contract to
38 provide those listings clearly specifies that the purchase of any
39 other goods and services is optional, and as long as the price
40 charged for any other goods and services is fair and reasonable.

~~(2) In an action alleging that the price charged for any other goods and services is not fair and reasonable, the burden shall be on the commissioner to demonstrate that the price charged unreasonably exceeds the fee customarily charged for the same or comparable goods or services in the community in which the prepaid rental listing service operates. The fact that the price charged for goods or services exceeds the cost incurred by the prepaid rental listing service shall not render the price charged for the goods or services to be unfair or unreasonable, so long as the price charged does not unreasonably exceed the fee customarily charged for the same or comparable goods or services in the community in which the prepaid rental listing service operates.~~

~~(3) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.~~

~~SEC. 5. Section 10167.2 is added to the Business and Professions Code, to read:~~

~~10167.2. (a) It is unlawful for any person to engage in the business of a prepaid rental listing service unless the person is licensed as a real estate broker or is licensed as a real estate salesperson and is acting under the supervision of a real estate broker.~~

~~(b) (1) The requirements of this article apply only to the provision of listings of residential real properties for tenancy by prepaid rental listing services. Except if expressly provided otherwise in this article, the requirements of this article do not apply to any other goods or services sold by a prepaid rental listing service as long as the purchase of those goods or services is not required to obtain those listings, and as long as the purchase of those goods or services is not included in the same contract as the contract to provide those listings, and as long as the contract to provide those listings clearly specifies that the purchase of any other goods and services is optional, and as long as the price charged for any other goods and services is fair and reasonable.~~

~~(2) In an action alleging that the price charged for any other goods and services is not fair and reasonable, the burden shall be on the commissioner to demonstrate that the price charged unreasonably exceeds the fee customarily charged for the same or comparable goods or services in the community in which the prepaid rental listing service operates. The fact that the price~~

1 charged for goods or services exceeds the cost incurred by the
2 prepaid rental listing service shall not render the price charged for
3 the goods or services to be unfair or unreasonable, so long as the
4 price charged does not unreasonably exceed the fee customarily
5 charged for the same or comparable goods or services in the
6 community in which the prepaid rental listing service operates.

7 (e) This section shall become operative on January 1, 2015.

8 SEC. 6. Section 10167.3 of the Business and Professions Code
9 is amended to read:

10 10167.3. (a) A separate application for a license as a prepaid
11 rental listing service shall be made in writing for each location to
12 be operated by a licensee other than a real estate broker. Each
13 application shall be on forms provided by the department, shall be
14 signed by the applicant, and shall be accompanied by a one hundred
15 dollar (\$100) application fee for the first location, and a twenty-five
16 dollar (\$25) application fee for each additional location of the
17 applicant.

18 Applications to add or eliminate locations during the term of a
19 license shall be on forms prescribed by the department. A
20 twenty-five dollar (\$25) application fee for the remainder of a
21 license term for each location to be added shall accompany the
22 application.

23 (b) A real estate broker may provide a prepaid rental listing
24 service at a licensed office for the conduct of his or her real estate
25 brokerage business if the business at the office is conducted under
26 the immediate supervision of the broker or of a real estate
27 salesperson licensed to, and acting on behalf of, the broker.

28 (c) This section shall remain in effect only until January 1, 2015,
29 and as of that date is repealed, unless a later enacted statute, that
30 is enacted before January 1, 2015, deletes or extends that date.

31 SEC. 7. Section 10167.3 is added to the Business and
32 Professions Code, to read:

33 10167.3. (a) A real estate licensee may provide a prepaid rental
34 listing service at any location where business is conducted under
35 the immediate supervision of a broker or of a real estate salesperson
36 licensed to, and acting on behalf of, the broker.

37 (b) This section shall become operative on January 1, 2015.

38 SEC. 8. Section 10167.4 of the Business and Professions Code
39 is repealed.

1 ~~SEC. 9. Section 10167.5 of the Business and Professions Code~~
2 ~~is amended to read:~~

3 ~~10167.5. The business at a location licensed pursuant to~~
4 ~~subdivision (a) of Section 10167.3 shall be conducted under the~~
5 ~~immediate supervision of the licensee or a designated agent who~~
6 ~~is not a designated agent at any other location. Whenever a~~
7 ~~designated agent ceases permanently to be a designated agent at~~
8 ~~any location because of death, termination of employment, or any~~
9 ~~other reason, the licensee, within five days thereafter, shall give~~
10 ~~written notice to the department. A license issued for a particular~~
11 ~~location shall automatically expire 60 days after the time the~~
12 ~~business conducted at such location ceases for any reason to be~~
13 ~~under the charge of and managed by the designated agent of record~~
14 ~~with the department, unless within such 60-day period the licensee~~
15 ~~submits written notice of the new designated agent to the~~
16 ~~department.~~

17 ~~A designated agent of the licensed service may serve as~~
18 ~~designated agent for the location in question as well as for the~~
19 ~~location for which he or she is the designated agent of record during~~
20 ~~the period of 60 days.~~

21 ~~This section shall remain in effect only until January 1, 2015,~~
22 ~~and as of that date is repealed, unless a later enacted statute, that~~
23 ~~is enacted before January 1, 2015, deletes or extends that date.~~

24 ~~SEC. 10. Section 10167.6 of the Business and Professions~~
25 ~~Code is repealed.~~

26 ~~SECTION 1. Section 149 of the Business and Professions Code~~
27 ~~is amended to read:~~

28 149. (a) If, upon investigation, an agency designated in
29 subdivision (e) has probable cause to believe that a person is
30 advertising in a telephone directory with respect to the offering or
31 performance of services, without being properly licensed by or
32 registered with the agency to offer or perform those services, the
33 agency may issue a citation under Section 148 containing an order
34 of correction that requires the violator to do both of the following:

35 (1) Cease the unlawful advertising.

36 (2) Notify the telephone company furnishing services to the
37 violator to disconnect the telephone service furnished to any
38 telephone number contained in the unlawful advertising.

39 (b) This action is stayed if the person to whom a citation is
40 issued under subdivision (a) notifies the agency in writing that he

1 or she intends to contest the citation. The agency shall afford an
2 opportunity for a hearing, as specified in Section 125.9.

3 (c) If the person to whom a citation and order of correction is
4 issued under subdivision (a) fails to comply with the order of
5 correction after that order is final, the agency shall inform the
6 Public Utilities Commission of the violation and the Public Utilities
7 Commission shall require the telephone corporation furnishing
8 services to that person to disconnect the telephone service furnished
9 to any telephone number contained in the unlawful advertising.

10 (d) The good faith compliance by a telephone corporation with
11 an order of the Public Utilities Commission to terminate service
12 issued pursuant to this section shall constitute a complete defense
13 to any civil or criminal action brought against the telephone
14 corporation arising from the termination of service.

15 (e) Subdivision (a) shall apply to the following boards, bureaus,
16 committees, commissions, or programs:

- 17 (1) The Bureau of Barbering and Cosmetology.
- 18 (2) The Cemetery and Funeral Bureau.
- 19 (3) The Veterinary Medical Board.
- 20 (4) The Landscape Architects Technical Committee.
- 21 (5) The California Board of Podiatric Medicine.
- 22 (6) The Respiratory Care Board of California.
- 23 (7) The Bureau of Electronic and Appliance Repair, Home
24 Furnishings, and Thermal Insulation.
- 25 (8) The Bureau of Security and Investigative Services.
- 26 (9) The Bureau of Automotive Repair.
- 27 (10) The California Architects Board.
- 28 (11) The Speech-Language Pathology and Audiology Board.
- 29 (12) The Board for Professional Engineers and Land Surveyors.
- 30 (13) The Board of Behavioral Sciences.
- 31 (14) The Structural Pest Control Board ~~within the Department~~
32 ~~of Pesticide Regulation.~~
- 33 (15) The Acupuncture Board.
- 34 (16) The Board of Psychology.
- 35 (17) The California Board of Accountancy.
- 36 (18) The Naturopathic Medicine Committee.
- 37 (19) The Physical Therapy Board of California.
- 38 (20) The Bureau for Private Postsecondary Education.
- 39 (21) *The Bureau of Real Estate.*

1 SEC. 2. *Section 10080.9 of the Business and Professions Code*
2 *is amended to read:*

3 10080.9. (a) If, upon inspection, examination, or investigation,
4 the commissioner has cause to believe that a person who does not
5 possess a real estate license is engaged or has engaged in activities
6 for which a real estate license is required, *or that a person who*
7 *does not possess a prepaid rental listing service license or a real*
8 *estate broker license is engaged or has engaged in activities for*
9 *which a license is required pursuant to Section 10167.2*, or that a
10 licensee is violating or has violated any provision of this division
11 or any rule or order thereunder, the commissioner or his or her
12 designated representative may issue a citation to that person in
13 writing, describing with particularity the basis of the citation. Each
14 citation may contain an order to correct the violation or violations
15 identified and a reasonable time period or periods by which the
16 violation or violations must be corrected. In addition, each citation
17 may assess an administrative fine not to exceed two thousand five
18 hundred dollars (\$2,500), which shall be deposited into the
19 Recovery Account of the Real Estate Fund and shall, upon
20 appropriation by the Legislature, be available for expenditure for
21 the purposes specified in Chapter 6.5 (commencing with Section
22 10470). In assessing a fine, the commissioner shall give due
23 consideration to the appropriateness of the amount of the fine with
24 respect to factors such as the gravity of the violation, the good
25 faith of the person cited, and the history of previous violations. A
26 citation issued and a fine assessed pursuant to this section, while
27 constituting discipline for a violation of the law, shall be in lieu
28 of other administrative discipline by the commissioner for the
29 offense or offenses cited, and the citation against and payment of
30 any fine by a licensee shall not be reported as disciplinary action
31 taken by the commissioner.

32 (b) Notwithstanding subdivision (a), nothing in this section shall
33 prevent the commissioner from issuing an order to desist and
34 refrain from engaging in a specific business activity or activities
35 or an order to suspend all business operations to a person who is
36 engaged in or has engaged in continued or repeated violations of
37 this part. In any of these circumstances, the sanctions authorized
38 under this section shall be separate from, and in addition to, all
39 other administrative, civil, or criminal penalties.

(c) If, within 30 days from the receipt of the citation or the citation and fine, the person cited fails to notify the commissioner that he or she intends to request a hearing as described in subdivision (d), the citation or the citation and fine shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) After the exhaustion of the review procedures provided for in this section, the commissioner may apply to the appropriate superior court for a judgment in the amount of any administrative penalty imposed pursuant to subdivision (a) and an order compelling the cited person to comply with the order of the commissioner. The application, which shall include a certified copy of the final order of the commissioner, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

(f) Failure of any person to comply with the terms of a citation or pay a fine assessed pursuant to this section, within a reasonable period specified by the commissioner, shall subject that person to disciplinary action by the commissioner. In no event may a license be renewed if an unpaid fine remains outstanding or the terms of a citation have not been complied with.

SEC. 3. Section 10167.3 of the Business and Professions Code is amended to read:

10167.3. (a) A separate application for a license as a prepaid rental listing service shall be made in writing for each location to be operated by a licensee other than a real estate broker. Each application shall be on forms provided by the ~~department~~ *bureau*, shall be signed by the applicant, and shall be accompanied by a one hundred-dollar (~~\$100~~) *twenty-five dollar (\$125)* application fee for the first location, and a ~~twenty-five dollar (\$25)~~ *fifty dollar (\$50)* application fee for each additional location of the applicant.

Applications to add or eliminate locations during the term of a license shall be on forms prescribed by the ~~department~~. ~~A twenty-five dollar (\$25) bureau. A fifty dollar (\$50) application fee for the remainder of a license term for each location to be added shall accompany the application. Twenty-five dollars (\$25) of each application fee shall be credited to the Consumer Recovery Account.~~

(b) A real estate broker may provide a prepaid rental listing service at a licensed office for the conduct of his or her real estate brokerage business if the business at the office is conducted under the immediate supervision of the broker or of a real estate salesperson licensed to, and acting on behalf of, the broker.

SEC. 4. *Section 10167.9 of the Business and Professions Code is amended to read:*

10167.9. (a) Prior to the acceptance of a fee, a licensee shall offer the prospective tenant a written contract, either on paper or in electronic form, which shall include at least the following:

(1) The name *and license number* of the licensee and the addresses and telephone numbers of the principal office or location of the licensee and of the location, or branch office of a real estate broker, providing the listing to the prospective tenant.

(2) Acknowledgment of receipt of the fee, including the amount.

(3) A description of the service to be performed by the licensee, including significant conditions, restrictions, and limitations where applicable.

(4) The prospective tenant's specifications for the rental property, including, but not limited to:

(A) Type of structure, including, but not limited to, detached single-family home, apartment, or duplex.

(B) Location by commonly accepted residential area name, by designation of boundary streets, or by any other manner affording a reasonable means of identifying locations acceptable to the prospective tenant.

(C) Furnished or unfurnished.

(D) Number of bedrooms required.

(E) Maximum acceptable monthly rental.

(5) The contract expiration date, which shall not be later than 90 days from the date of execution of the contract.

(6) A clause setting forth the right to a full or partial refund of the fee paid as provided in Section 10167.10.

(7) The signature and printed full name of the licensee or of the designated agent, real estate salesperson, or employee acting on behalf of the licensee. The signature of any person, including any signature required by the terms of the contract to be provided by the prospective tenant, may be provided in any electronic form that provides a reasonable method of indicating that the individual

1 whose signature is required authorized the contract to be signed
2 in that electronic form.

3 (8) A clause in bold type letters outlining the small claims court
4 remedy available to the prospective tenant.

5 (9) A clause in boldface type letters clearly stating that the
6 purchase of any goods and services other than the provision of
7 listings of residential real properties for tenancy is optional.

8 (b) (1) The original of each contract, any separate contracts for
9 required goods or services, refund claims, receipts and any other
10 relevant documents shall be retained by the licensee for a period
11 of not less than three years from the date of termination of the
12 contract during which time the contract shall be subject to
13 examination by a duly authorized representative of the
14 commissioner. Any records retained pursuant to this subdivision
15 that are stored in the ordinary course of business in digital media
16 shall, upon request of a duly authorized representative of the
17 commissioner, be provided on diskette, CD-ROM or similar
18 portable digital storage medium. For purposes of this subdivision,
19 the “original” of a contract executed in electronic form shall be
20 either the copy of the contract stored in digital media or a paper
21 printout of that contract.

22 (2) Any licensee, or employee thereof, shall dispose of the
23 documents required to be kept pursuant to paragraph (1) by
24 shredding or other appropriate means so that the identity of the
25 prospective tenant may not be determined from the disposed
26 information alone or in combination with other publicly available
27 information.

28 (c) The form of contract proposed to be used by a licensee to
29 effect compliance with this section shall be filed with the
30 ~~department~~ *bureau* prior to use. Any modification of a form
31 previously filed with the ~~department~~, *bureau*, including a change
32 in the name or business address of the licensee, shall also be filed
33 prior to use. The ~~department~~ *bureau* shall withhold the issuance
34 or renewal of a license until the ~~department~~ *bureau* has approved
35 the contract. If a proposed modification to a contract has not been
36 approved or disapproved within 15 working days of being filed
37 with the ~~department~~ *bureau*, the proposed modification shall be
38 deemed approved. If a proposed modification or contract provision
39 is disapproved, the ~~department~~ *bureau* shall communicate that
40 disapproval in writing to the licensee within 15 working days of

1 being filed with the ~~department~~, *bureau*, accompanied by a written
2 justification of why the modification or contract provision is
3 contrary to the requirements of this article.

4 (d) Notwithstanding any other provision of law, a contract for
5 prepaid rental listing services executed in electronic form, and
6 signed in any electronic form that provides a reasonable method
7 of indicating that the individual whose signature is required
8 authorized the contract to be signed in electronic form, shall be
9 valid to the same extent as an executed written contract. Upon
10 request by the customer, the licensee shall deliver an executed
11 paper copy to the customer within five working days of receiving
12 the request.

13 ~~SEC. 11.~~

14 *SEC. 5.* Section ~~10167.6~~ *10167.95* is added to the Business
15 and Professions Code, to read:

16 ~~10167.6:~~

17 *10167.95.* Prior to the acceptance of a fee, and in addition to
18 the contract required pursuant to Section ~~10167.4~~ *10167.9*, a
19 licensee shall provide the prospective tenant with the following
20 written notice, in a type size of at least 12-point type:

21
22 YOU MAY BE ENTITLED TO A REFUND IF YOU DO NOT
23 RECEIVE THE SERVICES YOU HAVE BEEN PROMISED.
24 COMPLETE TERMS AND CONDITIONS GOVERNING THE
25 REFUND TO WHICH YOU MAY BE ENTITLED ARE
26 CONTAINED IN YOUR CONTRACT. THE FOLLOWING IS
27 A SIMPLIFIED SUMMARY OF SOME OF THE RIGHTS
28 DESCRIBED IN YOUR CONTRACT:

29 If (name of licensee) does not provide you with at least three
30 available rental properties meeting the specifications of your
31 contract within five days after you pay the fee charged by (name
32 of licensee), you are entitled to a full refund. To obtain this refund,
33 you must request it from (name of licensee) in writing within 15
34 days of paying your fee.

35 If you do not obtain a rental through the services of (name of
36 licensee) during the term of your contract, you are entitled to a
37 refund of your fee, minus a service charge, which may not exceed
38 ____ dollars (\$____). To obtain this refund, you must provide
39 (name of licensee) with written documentation or a signed
40 statement that you obtained a rental without the assistance of (name

1 of licensee) or that you did not move. This documentation or signed
2 statement must be provided to (name of licensee) with a written
3 request for refund, within 10 days following the expiration of your
4 contract.

5 If (name of licensee) fails to refund your money, as required by
6 your contract, you may sue (name of licensee) in a small claims
7 court. The court may award you the refund you failed to receive,
8 plus additional damages, up to \$1,000.

9 If you wish to file a complaint about (name of licensee) or if you
10 cannot collect on a court award, you should contact the Bureau of
11 Real Estate at 1-877-373-4542 or ~~www.dre.ca.gov.~~
12 *www.bre.ca.gov.*

13
14 ~~SEC. 12. Section 10167.7 of the Business and Professions~~
15 ~~Code is repealed.~~

16 ~~SEC. 13. Section 10167.8 of the Business and Professions~~
17 ~~Code is repealed.~~

18 ~~SEC. 14. Section 10167.9 of the Business and Professions~~
19 ~~Code is amended and renumbered to read:~~

20 ~~10167.4. (a) Prior to the acceptance of a fee, a licensee shall~~
21 ~~offer the prospective tenant a written contract, either on paper or~~
22 ~~in electronic form, which shall include at least the following:~~

23 ~~(1) The name and license number of the licensee and the address~~
24 ~~and telephone number of the principal office or location of the~~
25 ~~licensee providing the listing to the prospective tenant.~~

26 ~~(2) Acknowledgment of receipt of the fee, including the amount.~~

27 ~~(3) A description of the service to be performed by the licensee,~~
28 ~~including significant conditions, restrictions, and limitations where~~
29 ~~applicable.~~

30 ~~(4) The prospective tenant's specifications for the rental~~
31 ~~property, including, but not limited to:~~

32 ~~(A) Type of structure, including, but not limited to, detached~~
33 ~~single-family home, apartment, or duplex.~~

34 ~~(B) Location by commonly accepted residential area name, by~~
35 ~~designation of boundary streets, or by any other manner affording~~
36 ~~a reasonable means of identifying locations acceptable to the~~
37 ~~prospective tenant.~~

38 ~~(C) Furnished or unfurnished.~~

39 ~~(D) Number of bedrooms required.~~

40 ~~(E) Maximum acceptable monthly rental.~~

~~(5) The contract expiration date, which shall not be later than 90 days from the date of execution of the contract.~~

~~(6) A clause setting forth the right to a full or partial refund of the fee paid as provided in Section 10167.10.~~

~~(7) The signature and printed full name of the licensee. The signature of any person, including any signature required by the terms of the contract to be provided by the prospective tenant, may be provided in any electronic form that provides a reasonable method of indicating that the individual whose signature is required authorized the contract to be signed in that electronic form.~~

~~(8) A clause in bold type letters outlining the small claims court remedy available to the prospective tenant.~~

~~(9) A clause in boldface type letters clearly stating that the purchase of any goods and services other than the provision of listings of residential real properties for tenancy is optional.~~

~~(b) (1) The original of each contract, any separate contracts for required goods or services, refund claims, receipts and any other relevant documents shall be retained by the licensee for a period of not less than three years from the date of termination of the contract during which time the contract shall be subject to examination by a duly authorized representative of the commissioner. Any records retained pursuant to this subdivision that are stored in the ordinary course of business in digital media shall, upon request of a duly authorized representative of the commissioner, be provided on diskette, CD-ROM or similar portable digital storage medium. For purposes of this subdivision, the "original" of a contract executed in electronic form shall be either the copy of the contract stored in digital media or a paper printout of that contract.~~

~~(2) Any licensee, or employee thereof, shall dispose of the documents required to be kept pursuant to paragraph (1) by shredding or other appropriate means so that the identity of the prospective tenant may not be determined from the disposed information alone or in combination with other publicly available information.~~

~~(c) The form of contract proposed to be used by a licensee to effect compliance with this section shall be filed with the department prior to use. Any modification of a form previously filed with the department, including a change in the name or business address of the licensee, shall also be filed prior to use.~~

1 The department shall withhold the issuance or renewal of a license
2 until the department has approved the contract. If a proposed
3 modification to a contract has not been approved or disapproved
4 within 15 working days of being filed with the department, the
5 proposed modification shall be deemed approved. If a proposed
6 modification or contract provision is disapproved, the department
7 shall communicate that disapproval in writing to the licensee within
8 15 working days of being filed with the department, accompanied
9 by a written justification of why the modification or contract
10 provision is contrary to the requirements of this article.

11 (d) Notwithstanding any other provision of law, a contract for
12 prepaid rental listing services executed in electronic form, and
13 signed in any electronic form that provides a reasonable method
14 of indicating that the individual whose signature is required
15 authorized the contract to be signed in electronic form, shall be
16 valid to the same extent as an executed written contract. Upon
17 request by the customer, the licensee shall deliver an executed
18 paper copy to the customer within five working days of receiving
19 the request.

20 SEC. 15. Section 10167.13 of the Business and Professions
21 Code is amended to read:

22 10167.13. (a) A prepaid rental listing service license issued
23 by the department shall be for a period of two years. An application
24 and fee for renewal filed with the department before midnight of
25 the last day of the period for which a previous license was issued
26 entitles the licensee to continue operating at all locations specified
27 in the previous license for which a renewal fee is paid.

28 (b) On and after January 1, 2014, the department shall not issue
29 a prepaid rental listing service license.

30 (c) This section shall remain in effect only until January 1, 2015,
31 and as of that date is repealed, unless a later enacted statute, that
32 is enacted before January 1, 2015, deletes or extends that date.

33 SEC. 16. Section 10167.16 of the Business and Professions
34 Code is amended to read:

35 10167.16. (a) A person or corporation licensed pursuant to
36 this article and not engaging in acts for which a real estate license
37 is required under Article 1 (commencing with Section 10130) of
38 Chapter 3 of Part 1 of Division 4, shall be subject, in addition to
39 the provisions of this article, to the provisions of Chapter 1
40 (commencing with Section 10000) and Chapter 2 (commencing

1 with Section 10050) of Part 1 of Division 4, and to Sections 10450,
2 10452, 10453, and 10454.

3 ~~(b) This section shall remain in effect only until January 1, 2015,~~
4 ~~and as of that date is repealed, unless a later enacted statute, that~~
5 ~~is enacted before January 1, 2015, deletes or extends that date.~~

6 ~~SEC. 17. Section 10167.17 of the Business and Professions~~
7 ~~Code is repealed.~~

8 *SEC. 6. Section 10470 of the Business and Professions Code*
9 *is amended to read:*

10 10470. If, on June 30 of any year, the balance remaining in the
11 Consumer Recovery Account in the Real Estate Fund is less than
12 two hundred thousand dollars (\$200,000), every licensed broker,
13 when obtaining or renewing any broker license within four years
14 thereafter, shall pay, in addition to the license fee, a fee of seven
15 dollars ~~(\$7), and (\$7);~~ every licensed salesperson, when obtaining
16 or renewing such license within four years thereafter, shall pay,
17 in addition to the license fee, a fee of four dollars (\$4); *and every*
18 *person holding a prepaid rental listing service license, when*
19 *obtaining or renewing that license within two years thereafter,*
20 *shall pay, in addition to the application fee, a fee of one dollar*
21 *(\$1). The fees from both broker and the broker, salesperson, and*
22 *prepaid rental listing service licensees shall be paid into the State*
23 *Treasury and credited to the Consumer Recovery Account.*

24 *SEC. 7. Section 10471 of the Business and Professions Code*
25 *is amended to read:*

26 10471. (a) When an aggrieved person obtains (1) a final
27 judgment in a court of competent jurisdiction, including, but not
28 limited to, a criminal restitution order issued pursuant to
29 subdivision (f) of Section 1202.4 of the Penal Code or Section
30 3663 of Title 18 of the United States Code, or (2) an arbitration
31 award that includes findings of fact and conclusions of law
32 rendered in accordance with the rules established by the American
33 Arbitration Association or another recognized arbitration body,
34 and in accordance with Sections 1281 to 1294.2, inclusive, of the
35 Code of Civil Procedure where applicable, and where the
36 arbitration award has been confirmed and reduced to judgment
37 pursuant to Section 1287.4 of the Code of Civil Procedure, against
38 a defendant based upon the defendant's fraud, misrepresentation,
39 or deceit, made with intent to defraud, or conversion of trust funds,
40 arising directly out of any transaction in which the defendant, while

1 licensed under this part, performed acts for which a real estate
2 license *or a prepaid rental listing service license* was required,
3 the aggrieved person may, upon the judgment becoming final, file
4 an application with the ~~Department~~ *Bureau* of Real Estate for
5 payment from the Consumer Recovery Account, within the
6 limitations specified in Section 10474, of the amount unpaid on
7 the judgment that represents an actual and direct loss to the
8 claimant in the transaction. As used in this chapter, “court of
9 competent jurisdiction” includes the federal courts, but does not
10 include the courts of another state.

11 (b) The application shall be delivered in person or by certified
12 mail to an office of the ~~department~~ *bureau* not later than one year
13 after the judgment has become final.

14 (c) The application shall be made on a form prescribed by the
15 ~~department~~, *bureau*, verified by the claimant, and shall include the
16 following:

17 (1) The name and address of the claimant.

18 (2) If the claimant is represented by an attorney, the name,
19 business address, and telephone number of the attorney.

20 (3) The identification of the judgment, the amount of the claim
21 and an explanation of its computation.

22 (4) A detailed narrative statement of the facts in explanation of
23 the allegations of the complaint upon which the underlying
24 judgment is based.

25 (5) (A) Except as provided in subparagraph (B), a statement
26 by the claimant, signed under penalty of perjury, that the complaint
27 upon which the underlying judgment is based was prosecuted
28 conscientiously and in good faith. As used in this section,
29 “conscientiously and in good faith” means that no party potentially
30 liable to the claimant in the underlying transaction was intentionally
31 and without good cause omitted from the complaint, that no party
32 named in the complaint who otherwise reasonably appeared capable
33 of responding in damages was dismissed from the complaint
34 intentionally and without good cause, and that the claimant
35 employed no other procedural means contrary to the diligent
36 prosecution of the complaint in order to seek to qualify for the
37 Consumer Recovery Account.

38 (B) For the purpose of an application based on a criminal
39 restitution order, all of the following statements by the claimant:

1 (i) The claimant has not intentionally and without good cause
2 failed to pursue any person potentially liable to the claimant in the
3 underlying transaction other than a defendant who is the subject
4 of a criminal restitution order.

5 (ii) The claimant has not intentionally and without good cause
6 failed to pursue in a civil action for damages all persons potentially
7 liable to the claimant in the underlying transaction who otherwise
8 reasonably appeared capable of responding in damages other than
9 a defendant who is the subject of a criminal restitution order.

10 (iii) The claimant employed no other procedural means contrary
11 to the diligent prosecution of the complaint in order to seek to
12 qualify for the Consumer Recovery Account.

13 (6) The name and address of the judgment debtor or, if not
14 known, the names and addresses of persons who may know the
15 judgment debtor's present whereabouts.

16 (7) The following representations and information from the
17 claimant:

18 (A) That he or she is not a spouse of the judgment debtor nor a
19 personal representative of the spouse.

20 (B) That he or she has complied with all of the requirements of
21 this chapter.

22 (C) That the judgment underlying the claim meets the
23 requirements of subdivision (a).

24 (D) A description of searches and inquiries conducted by or on
25 behalf of the claimant with respect to the judgment debtor's assets
26 liable to be sold or applied to satisfaction of the judgment, an
27 itemized valuation of the assets discovered, and the results of
28 actions by the claimant to have the assets applied to satisfaction
29 of the judgment.

30 (E) That he or she has diligently pursued collection efforts
31 against all judgment debtors and all other persons liable to the
32 claimant in the transaction that is the basis for the underlying
33 judgment.

34 (F) That the underlying judgment and debt have not been
35 discharged in bankruptcy, or, in the case of a bankruptcy
36 proceeding that is open at or after the time of the filing of the
37 application, that the judgment and debt have been declared to be
38 nondischargeable.

1 (G) That the application was mailed or delivered to the
2 ~~department~~ *bureau* no later than one year after the underlying
3 judgment became final.

4 (d) If the claimant is basing his or her application upon a
5 judgment against a salesperson, and the claimant has not obtained
6 a judgment against that salesperson's employing broker, if any, or
7 has not diligently pursued the assets of that broker, the application
8 shall be denied for failure to diligently pursue the assets of all other
9 persons liable to the claimant in the transaction unless the claimant
10 can demonstrate, by clear and convincing evidence, either that the
11 salesperson was not employed by a broker at the time of the
12 transaction, or that the salesperson's employing broker would not
13 have been liable to the claimant because the salesperson was acting
14 outside the scope of his or her employment by the broker in the
15 transaction.

16 (e) The application form shall include detailed instructions with
17 respect to documentary evidence, pleadings, court rulings, the
18 products of discovery in the underlying litigation, and a notice to
19 the applicant of his or her obligation to protect the underlying
20 judgment from discharge in bankruptcy, to be appended to the
21 application.

22 (f) An application for payment from the Consumer Recovery
23 Account that is based on a criminal restitution order shall comply
24 with all of the requirements of this chapter. For the purpose of an
25 application based on a criminal restitution order, the following
26 terms have the following meanings:

27 (1) "Judgment" means the criminal restitution order.

28 (2) "Complaint" means the facts of the underlying transaction
29 upon which the criminal restitution order is based.

30 (3) "Judgment debtor" means any defendant who is the subject
31 of the criminal restitution order.

32 ~~The amendments to this section made at the July 1997-98~~
33 ~~Regular Session shall become operative July 1, 2000.~~

34 *SEC. 8. Section 10475 of the Business and Professions Code*
35 *is amended to read:*

36 10475. Should the commissioner pay from the Consumer
37 Recovery Account any amount in settlement of a claim or toward
38 satisfaction of a judgment against a licensed broker or salesperson
39 *or a person holding a prepaid rental listing service license*, the
40 license of the broker or salesperson *or prepaid rental listing service*

1 *licensee* shall be automatically suspended upon the date of payment
2 from the Consumer Recovery Account. No broker or salesperson
3 *or prepaid rental listing service licensee* shall be granted
4 reinstatement until he or she has repaid in full, plus interest at the
5 prevailing legal rate applicable to a judgment rendered in any court
6 of this state, the amount paid from the Consumer Recovery
7 Account on his or her account. A discharge in bankruptcy shall
8 not relieve a person from the penalties and disabilities provided
9 in this chapter.

10 ~~SEC. 18.~~

11 *SEC. 9.* No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.